Beth A. Wilkinson (*pro hac vice*)
Rakesh N. Kilaru (*pro hac vice*)
Kieran Gostin (*pro hac vice*)
WILKINSON STEKLOFF LLP
2001 M Street NW, 10th Floor
Washington, DC 20036
Telephone: (202) 847-4000
Facsimile: (202) 847-4005
bwilkinson@wilkinsonstekloff.com
rkilaru@wilkinsonstekloff.com
kgostin@wilkinsonstekloff.com

Rahul Hari (SBN 313528)
WILKINSON STEKLOFF LLP
11601 Wilshire Blvd., Suite 600
Los Angeles, CA 90025
Telephone: (424) 291-9655
Facsimile: (202) 847-4005
rhari@wilkinsonstekloff.com

Attorneys for Defendant
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

[Additional Counsel Listed on Signature Page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

GRANT HOUSE, et al.,

Plaintiffs,

v.

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, et al.,

Defendants.

TYMIR OLIVER, on behalf of himself and all others similarly situated,

Plaintiffs,

v.

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, et al.,

Defendants.

No. 4:20-cv-03919-CW
No. 4:20-cv-04527-CW

DEFENDANTS' REPLY IN SUPPORT OF MOTION TO STAY DISCOVERY

As the Ninth Circuit has made clear, whether to grant a *Landis* stay turns on "the circumstances of this case." *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1113 (9th Cir. 2005). The relevant circumstances are as follows: (1) Defendants' motion to dismiss the case in full remains pending; (2) the Supreme Court will issue a decision within five months that, in Plaintiffs' own words, "may be informative," Opp. 3; and (3) the earliest Plaintiffs could obtain any relief from this Court would be in late 2023. These undisputed facts merit a temporary stay of discovery, and Plaintiffs' Opposition provides no justification for thinking otherwise.

As an initial matter, Plaintiffs' request for injunctive relief does not, as they suggest (Opp. 1), make a *Landis* stay inappropriate. Courts in this District routinely grant stays in cases seeking injunctive relief based on alleged ongoing harm. *See, e.g.*, *Grundstrom v. Wilco Life Ins. Co.*, 2020 WL 6873645, at *3–4 (N.D. Cal. Oct. 13, 2020) (granting *Landis* stay pending a decision from either the Ninth Circuit or California Supreme Court in potentially informative cases); *Gustavson v. Mars, Inc.*, 2014 WL 6986421 (N.D. Cal. Dec. 10, 2014) (similar). *Lockyer*—decided before both those cases—is not to the contrary. Indeed, the Ninth Circuit specifically noted that it did "not intend that this opinion be read to restrict unduly the ability of the district court, in appropriate cases, to issue *Landis* stays." 398 F.3d at 1112–13. The issue in *Lockyer* was whether to stay an enforcement action by the Attorney General of California pending bankruptcy court proceedings against the defendant. *Id.* at 1100. After rejecting arguments that the automatic bankruptcy stay should apply, *id.* at 1107–09, the Ninth Circuit also concluded that a *Landis* stay was "improper in the circumstances of [that] case," *id.* at 1113. In reaching that conclusion, the court did not hold that a request for injunctive relief was sufficient to defeat a stay motion. Instead, it emphasized that the case involved Clayton Act claims by the Attorney General in furtherance of his "police or regulatory power," and, in that context, the distinct "proceeding in the bankruptcy court [wa]s unlikely to decide, or contribute to the decision of, the factual and legal issues before the district court." *Id.* at 1112–13.

The balance of considerations is quite different in this private-party lawsuit. Defendants maintain that their motion to dismiss can and should be granted apart from the Supreme Court's

resolution of *Alston*, which would eliminate the need for all or at least some of the substantial discovery Plaintiffs have already sought. But Plaintiffs do not and cannot seriously dispute that, unlike the bankruptcy court decision in *Lockyer*, the Supreme Court's decision in *Alston* could "contribute to the decision of[] the factual and legal issues before the district court," including on discovery. *Id.* at 1113. Among other things, the opening briefs in *Alston* asked the Supreme Court to hold that NCAA rules should be evaluated under "abbreviated deferential review" and "upheld on the pleadings," NCAA Br. 3, *NCAA v. Alston* (2020) (No. 20-512); *see* AAC Br. 13–14, *Am. Athletic Conf. v. Alston* (2020) (No. 20-520)—a ruling that would obviate or seriously curtail the scope of discovery in this case. More broadly, the cases bear on the proper method of antitrust analysis for rules that define a joint venture's product. That is more than enough to warrant a stay. There is no requirement (and Plaintiffs cite no authority suggesting) that a pending decision be "dispositive of the present case," Opp. 12; *see Grundstrom*, 2020 WL 6873645, at *3 (granting stay where pending decisions could "provide 'valuable assistance to the court in resolving' [plaintiff]'s claims" (quoting *Levya v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979))); *Gustavson*, 2014 WL 6986421, at *2, *3 (granting stay where pending Ninth Circuit decision would "provide substantial guidance").

More importantly, the decision in *Alston* almost certainly will be issued within the next five months. The Supreme Court has scheduled oral argument for March 31, 2021, *see NCAA v. Alston*, No. 20-512 (docket order entered Feb. 1, 2021), and has historically issued all decisions in cases argued during a Term by the end of June. That fact alone distinguishes Plaintiffs' remaining authorities, which involved potentially indefinite stays. *See Yong v. I.N.S.*, 208 F.3d 1116, 1119 (9th Cir. 2000) (vacating "indefinite" stay that could last "perhaps for years"); *Lathrop v. Uber Techs., Inc.*, 2016 WL 97511, at *4 (N.D. Cal. Jan. 8, 2016) (denying stay that "would extend for an indeterminate length of time").

The short duration of the requested stay—less than five months—also tilts the balance of harms in favor of Defendants. Notwithstanding their claims of ongoing harm, *see* Opp. 5–6, Plaintiffs agreed to a schedule under which trial would not occur (and relief could not be granted) until at least late 2023, almost three years from now. In the meantime, Plaintiffs have propounded only requests

for production on Defendants, who are preserving potentially relevant documents and who responded to those requests on January 19, 2021, without any further follow-up from Plaintiffs, notwithstanding Defendants' offer to meet and confer on the requests. These facts belie Plaintiffs' assertions about the urgency of their claims, and common sense suggests that there will not be any material loss of memories or other evidence from the temporary stay Defendants seek. There is accordingly no "evidence that [plaintiffs] will be harmed by a stay." *Grundstrom*, 2020 WL 6873645, at *3 (internal quotation marks omitted). On the other hand, the actual collection, review, and production of documents is an expensive, time-consuming, and resource-draining burden on Defendants. *Id.* It has not proved necessary to date in light of the pace of discovery pursued by Plaintiffs, and Defendants respectfully submit that it can and should wait pending potentially case-ending or case-narrowing decisions by the Supreme Court and this Court.

CONCLUSION

The Court should stay discovery in *House* and *Oliver* pending this Court's resolution of Defendants' motion to dismiss and the United States Supreme Court's decision in *Alston*.

DATED: February 5, 2021

Respectfully submitted.

WILKINSON STEKLOFF LLP

By: */s/ Beth A. Wilkinson*

Beth A. Wilkinson (*pro hac vice*)
Rakesh N. Kilaru (*pro hac vice*)
Kieran Gostin (*pro hac vice*)
2001 M Street NW, 10th Floor
Washington, DC 20036
Telephone: (202) 847-4000
Facsimile: (202) 847-4005
bwilkinson@wilkinsonstekloff.com
rkilaru@wilkinsonstekloff.com
kgostin@wilkinsonstekloff.com

Rahul Hari (SBN 313528)
11601 Wilshire Blvd., Suite 600
Los Angeles, CA 90025
Telephone: (424) 291-9655
Facsimile: (202) 847-4005
rhari@wilkinsonstekloff.com

Attorneys for Defendant
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

PROSKAUER ROSE LLP

By: */s/ Scott P. Cooper*

Bart H. Williams (SBN 134009)
Scott P. Cooper (SBN 96905)
Kyle A. Casazza (SBN 254061)
Shawn S. Ledingham, Jr. (SBN 275268)
Jennifer L. Jones (SBN 284624)
2029 Century Park East, Suite 2400
Los Angeles, CA 90067
Telephone: (310) 557-2900
Facsimile: (310) 557-2193
bwilliams@proskauer.com
scooper@proskauer.com
kcasazza@proskauer.com
sledingham@proskauer.com
jljones@proskauer.com

Attorneys for Defendant
PAC-12 CONFERENCE

MAYER BROWN LLP

By: */s/ Britt M. Miller*

Britt M. Miller (*pro hac vice*)
Matthew D. Provance (*pro hac vice*)
71 South Wacker Drive
Chicago, IL 60606
Telephone: (312) 782-0600
Facsimile: (312) 701-7711
bmiller@mayerbrown.com
mprovance@mayerbrown.com

Christopher J. Kelly (SBN 276312)
Two Palo Alto Square, Suite 300
3000 El Camino Real
Palo Alto, CA 94306
Telephone: (650) 331-2000
Facsimile: (650) 331-2060
cjkelly@mayerbrown.com

Attorneys for Defendant
THE BIG TEN CONFERENCE, INC.

ROBINSON BRADSHAW & HINSON, P.A.

By: */s/ Robert W. Fuller*

Robert W. Fuller, III (*pro hac vice*)
Lawrence C. Moore, III (*pro hac vice*)
Pearlynn G. Houck (*pro hac vice*)
Amanda P. Nitto (*pro hac vice*)
101 N. Tryon St., Suite 1900
Charlotte, NC 28246
Telephone: (704) 377-2536
Facsimile: (704) 378-4000
rfuller@robinsonbradshaw.com
lmoore@robinsonbradshaw.com
phouck@robinsonbradshaw.com
anitto@robinsonbradshaw.com

Mark J. Seifert (SBN 217054)
Seifert Law Firm
50 California Street, Suite 1500
San Francisco, CA 94111
Telephone: (415) 999-0901
Facsimile: (415) 901-1123
mseifert@seifertfirm.com

Attorneys for Defendant
SOUTHEASTERN CONFERENCE

POLSINELLI PC

By: */s/ Leane K. Capps*

Leane K. Capps (*pro hac vice*)
Caitlin J. Morgan (*pro hac vice*)
D. Rockwell Bower (*pro hac vice*)
2950 N. Harwood Street, Suite 2100
Dallas, TX 75201
Telephone: (214) 397-0030
lcapps@polsinelli.com
cmorgan@polsinelli.com
rbower@polsinelli.com

Amy D. Fitts (*pro hac vice*)
120 W. 12th Street
Kansas City, MO 64105
Telephone: (816) 218-1255
afitts@polsinelli.com

Wesley D. Hurst (SBN 127564)
2049 Century Park East, Suite 2300
Los Angeles, CA 90067
Telephone: (310) 556-1801
whurst@polsinelli.com

Attorneys for Defendant
THE BIG 12 CONFERENCE, INC.

FOX ROTHSCHILD LLP

By: */s/ D. Erik Albright*

D. Erik Albright (*pro hac vice*)
Gregory G. Holland (*pro hac vice*)
230 North Elm Street, Suite 1200
Greensboro, NC 27401
Telephone: (336) 378-5368
Facsimile: (336) 378-5400
ealbright@foxrothschild.com
gholland@foxrothschild.com

Jonathan P. Heyl (*pro hac vice*)
101 N. Tryon Street, Suite 1300
Charlotte, NC 28246
Telephone: (704) 384-2625
Facsimile: (704) 384-2800
jheyl@foxrothschild.com

Alexander Hernaez (SBN 201441)
345 California Street, Suite 2200
San Francisco, CA 94104-2670
Telephone: (415) 364-5540
Facsimile: (415) 391-4436
ahernaez@foxrothschild.com

Attorneys for Defendant
ATLANTIC COAST CONFERENCE

E-FILING ATTESTATION

I, Beth A. Wilkinson, am the ECF User whose ID and password are being used to file this document. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that each of the signatories identified above has concurred in this filing.

/s/ Beth A. Wilkinson
BETH A. WILKINSON